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Attorney Docket No. AVMX-008/02US **PATENT**

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Date of Deposit: 24 May 2002

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Date: 24 May 2002 By: _____
Vladimir Skliba

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of Vincent J. Wacher, et al.

Serial No.: 09/914,364 Examiner: Brian Yong S. Kwon

Filed: August 24, 2001 Art Unit: 1614

For: USE OF GALLIC ACID ESTERS TO INCREASE BIOAVAILABILITY OF ORALLY ADMINISTERED PHARMACEUTICAL COMPOUNDS

Commissioner for Patents
Washington, D.C. 20231

TRANSMITTAL OF RESPONSE

Enclosed are the following documents in response to the Office Action mailed April 26, 2002, for the above-identified application:

[X] Response to Restriction Requirement;
[X] Return Postcard.

The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§1.16, 1.17, and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 03-3117.

Dated: May 24, 2002

Respectfully submitted,
COOLEY GODWARD LLP

By: _____
Anie K. Roche
Reg. No. 50,512

Cooley Godward LLP
ATTN: Patent Group
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Tel: (650) 843-5000
Fax: (650) 857-0663

AKR:dm

Rev. 10/30/2001

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RESPONSE

In response to the restriction requirement mailed April 26, 2002, Applicant elects, with traverse, the claims of Group II for further prosecution.

In the Office Action Summary, the Examiner has indicated that claims 1, 10-12, 14-23, 32-36, 38-43, and 52-55 are pending. In addition to these claims, claim 57 is also currently pending. Thus, the pending claims are 1, 10-12, 14-23, 32-36, 38-43, 52-55, and 57.

As the above-identified application is related to PCT/US00/05524 filed March 1, 2000, under 35 U.S.C. §371, Applicant believes that the Restriction Requirement is inappropriate. According to MPEP 1850, when the Office considers international applications during the national stage as a Designated or Elected Office under 35 U.S.C. 371, PCT Rule 13.1 and 13.2 will be followed when considering unity of invention of claims of different categories. Further, MPEP 1893.03 (d) reminds Examiners that unity of invention (not restriction) is applicable in national stage (filed under 35 U.S.C. 371) applications. In the PCT application,

PCT/US00/05524, no determination of a lack of unity of invention was made. Hence, Applicant respectfully traverses the restriction requirement and requests that it be withdrawn.

The Examiner has restricted the pending claims into 2 groups as follows:

Group I (1, 10-12, 14-22, 43, and 52-55) – directed to a method for increasing bioavailability of an orally administered compound by orally co-administering gallic acid ester, and

Group II (23, 32-36, and 38-40) – directed to formulating an oral pharmaceutical composition comprising gallic acid ester and a carrier.

Applicant believes that the Examiner has incorrectly grouped claims 43 and 52-55 with Group I claims. A review of claims 43 and 52-55 indicates that these claims are directed to reformulating an oral pharmaceutical composition, which Applicant believes are closely aligned with the method of formulating claims of Group II. Hence, Applicant believes that claims 43 and 52-55 belong in Group II, and not Group I. If the Examiner maintains the restriction requirement, then Applicant requests that the claims be restricted in the following manner:

Group I – claims 1, 10-12, and 14-22, and

Group II – claims 23, 32-36, 38-40, 43, and 52-55.

Consequently, Applicant requests that the regrouped claims of Group II along with the product claims 41-42 and 57 be elected for examination and the remaining of the pending claims be withdrawn.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned at (650) 843-5000.

Dated: May 24, 2002

Respectfully submitted,
COOLEY GODWARD LLP

By: Anie Roche

Anie K. Roche
Reg. No. 50,512

Cooley Godward LLP
ATTN: Patent Group
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Tel: (650) 843-5000
Fax: (650) 857-0663

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